



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 11, 1992

Honorable Bruce Isaacks  
Criminal District Attorney  
Denton County  
P. O. Box 2344  
Denton, Texas 76202

Letter Opinion No. 92-48

Re: Whether employees of the sheriff's department are included in the county civil service system under the Local Government Code chapter 158, subchapter A (ID# 15641)

Dear Mr. Isaacks:

Your office requested our opinion regarding the eligibility of employees of the county sheriff's department to participate in a county civil service system created pursuant to Local Government Code chapter 158, subchapter A (hereinafter referred to as "the county civil service act" or "the act"). The request letter states that the voters of Denton County approved the establishment of a county civil service system pursuant to Local Government Code section 158.004. It also states that the greatest number of county employees are assigned to the sheriff's department and include deputy sheriffs, certified detention officers, clerical staff, medical staff, building maintenance personnel, community relations officers, intake personnel, animal control officers, legal assistants, and chaplains. You conclude that because employees of the sheriff's department are under the control of the county sheriff, they are ineligible to participate in the county civil service system. In support of this contention, you cite Attorney General Opinions H-619 (1975), H-672 (1975) and the recent case *Clark v. Young*, 787 S.W.2d 166 (Tex. App.--Fort Worth 1990, writ denied).

The county civil service act defines "department" to mean "a county, district, or precinct office or officer, agency, or board *that has jurisdiction and control of the performance of employees' official duties.*" Local Gov't Code § 158.001(3) (emphasis added). "Employee" is defined generally as

a person who obtains a position by appointment and who is not authorized by statute to perform governmental functions involving an exercise of discretion in the person's own right . . . .

*Id.* § 158.001(2). This office has previously concluded that persons who are appointed to positions the duties of which are derivative of another officer's are "employees" for purposes of the county civil service act. See Attorney General Opinion H-619 (1975). A person who would otherwise be excluded from this definition may be included in a civil service system if the civil service commission includes the person by rule under section 158.009 or if the person is included within an expanded-coverage civil service system in a populous county under section 158.007. Local Gov't Code § 158.001(2). An officer whose term is limited by the state constitution is specifically excluded from the definition. *Id.*

This office has also previously determined that a deputy sheriff is not covered by the civil service act because he performs governmental functions involving some exercise of discretion in his own right and not in the right of the sheriff. Attorney General Opinion H-985 (1977). Attorney General Opinions H-619 and H-672 concluded that adult probation officers and juvenile probation officers were not within the scope of the county civil service act because the clear legislative intent was "to place wholly within the State courts of appropriate jurisdiction the responsibility for . . . the supervision of probationers." Code Crim. Proc. art. 42.12, § 1. The opinions determined that the conditions of employment over which the county civil service commission was given authority were an integral part of the courts' responsibility to supervise probationers. To place such matters within the control of the county civil service commission would effectively contravene the legislature's clearly expressed intent to exclusively assign such supervision to the state courts. See also Attorney General Opinion H-942 (1977) (secretaries and clerks employed by juvenile probation department not subject to county civil service act).<sup>1</sup>

You do not quarrel with the results of these opinions. However, you suggest that the rationale and test enunciated in the opinions has been undermined, if not implicitly overruled, by the decision in *Clark*. You sought our assistance in clarifying the effect of the *Clark* decision for purposes of determining the eligibility of county employees to participate in the county civil service system.

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<sup>1</sup>Contrary to the assertions in your request letter, these opinions do not compel the conclusion that merely because employees are under the control of the sheriff, they are ineligible to participate in the county civil service system. The critical factor in these opinions was not the fact that the employees were under the control of an officer, but the nature and purpose of the control delegated to the supervising officers.

The *Clark* case dealt with a request for declaratory judgment by Ms. Dorthea Clark to reinstate her to the position of court coordinator for the 297th District Court in Tarrant County. In the appeal of the denial of her request Ms. Clark claimed the trial court erred in finding that the position of court coordinator was not included in the county civil service system. The court of appeals affirmed, finding that under section 74.101 of the Government Code the court coordinator serves at the pleasure of the judge appointing her. The court construed this statutory limitation to mean that the court coordinator could be removed without cause and without notice and hearing. The court stated that this provision was therefore inconsistent with the concept of civil service protection. 787 S.W.2d at 168.

You suggest that *Clark* requires a determination of whether an individual serves at the pleasure of the appointing authority. If the individual does, he or she is ineligible for inclusion in the county civil service system. We do not believe *Clark* requires this analysis.

The decisive factor in *Clark* was legislative intent. The court of appeals construed two apparently conflicting code provisions, section 158.007 of the Local Government Code and section 74.101 of the Government Code. The former provision authorizes the voters of a county to expand the coverage of a county civil service system adopted pursuant to the terms of the county civil service act. It was enacted one day prior to the enactment of what is now section 74.101, authorizing the appointment of court coordinators. 787 S.W.2d at 168. In light of the fact that the later enacted provision, section 74.101, contained language stipulating that court coordinators serve at the pleasure of the judges who appoint them -- a concept inconsistent with civil service protection -- the court found that the manifest legislative intent was that court coordinators were not subject to a county civil service system.

As we read it, the chief lesson of *Clark* is that where the legislature has enacted a statute subsequent to the enactment of the county civil service act which requires employees to serve at the pleasure of the appointing authority, that statute will prevail over the civil service act and the employee will not be subject to the civil service system. So read, *Clark* does not necessarily alter or disapprove the test under the civil service act applied in the earlier opinions of this office.<sup>2</sup>

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<sup>2</sup>Indeed, the court in *Clark* did not purport to examine the specific duties of the court coordinator or the previous rulings of this office under county civil service act. Rather, the court relied upon provisions of the Code Construction Act in ascertaining the dominant legislative intent. See Gov't

In our opinion, the critical examination under the civil service act is still whether the persons occupying the positions in question are "employees" as defined in the act. What *Clark* requires in addition is an examination of the relevant statute, if any, authorizing the filling of a particular position within the county government. If the statute was originally enacted subsequent to the county civil service act, the statute must be carefully scrutinized to determine whether the legislature intended the employee to be excluded from the county civil service system.

### S U M M A R Y

Eligibility for inclusion in a county civil service system created pursuant to Local Government Code chapter 158, subchapter A, depends upon whether the person occupying the position in question is an "employee" as defined in section 158.001(2). An examination of the specific statute, if any, authorizing the filling of the position in question is required in order to determine whether the legislature intended to exclude the employee from the county civil service system.

Yours very truly,



Steve Aragón  
Assistant Attorney General  
Opinion Committee

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(footnote continued)

Code §§ 311.025, 311.026. In effect, the court concluded that the court coordinators statute is an implied exception to the county civil service act. In this respect, *Clark* is consistent with Attorney General Opinions H-619, H-672, and H-942, each of which relied upon legislative intent to find that persons employed by adult and juvenile probation departments are not subject to county civil service.